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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-sixth session

SECOND PART OF THE EXTENDED THIRTY-SIXTH
SESSION OF THE COMMITTEE

(Interim paper)

The following are those rules of procedure of the Committee, the texts of which were provisionally revised during the discussion at the second part of the extended thirty-sixth session of the Committee, held on 16, 18 and 19 July 1991.

Article II, paragraph 1

"1. (a) Applications asking the Committee in accordance with article 11 of the statute of the United Nations Administrative Tribunal to request an advisory opinion of the International Court of Justice shall be submitted in writing to the official designated by the Secretary-General to serve as Secretary of the Committee.

"(b) For the purposes of article 11, paragraph 1, of the statute of the Administrative Tribunal, the date of the judgement shall be considered to be the date by which it was received by both the parties to the proceedings before the Tribunal. That date shall be presumed to be 30 days after the dispatch of copies of the judgement by the Executive Secretary of the Tribunal, unless either party can show to the satisfaction of the Chairman of the Committee that the actual date of receipt was later.

"(c) For the purposes of paragraph 2 of article 11 of the statute, the date of receipt by the Committee of an application shall be the date two weeks after the copies of the application are dispatched to the members of the Committee by the Secretary of the Committee.

"(d) If the Chairman, after consulting all the members of the Committee, determines that the application has not been submitted within the time-limit set forth in paragraph 1 of article 11 of the statute of the United Nations Administrative Tribunal, the Secretary of the Committee shall so inform the Applicant."

Article III, paragraph 2

"2. If the Chairman of the Committee decides that an application manifestly does not comply with the requirements of article II, paragraph 2, of these rules, the application shall be returned by the Secretary of the Committee with a request that it be corrected and resubmitted within three weeks of the date on which the Secretary dispatched the application. If the Chairman of the Committee decides that the application has not been resubmitted within the indicated time-limit in a form which meets the requirements of article II, paragraph 2 of these rules, it shall be considered to be irreceivable, and the Secretary shall so inform the Applicant."

New article III bis

"At the beginning of each session the Chairman of the Committee shall inform the Committee of any application submitted since its last session that he decided, pursuant to subparagraph 1 (d) of article II on paragraph 2 of article III of these rules, was irreceivable and of the reasons for his decision."

Article VII, paragraph 2

"2. For the purposes of the examination of an application, the Committee shall have before it in document form only the application, the judgement of the Administrative Tribunal to which it relates and the comments of the other party to the proceedings before the Administrative Tribunal, if the latter wishes to submit such comments in accordance with paragraph 1 of article IV of the present rules. The application and the comments shall be submitted in writing only."

Article XI, paragraph 2

[subject to further discussion]

"2. A verbatim record, in English and French, of the proceedings of the Committee shall be prepared for the public meetings of the Committee referred to in paragraph 4 of article VII. If the Committee requests an advisory opinion of the International Court of Justice in respect of an application, the Secretary shall transmit to the Court the verbatim

record of the public meeting at which the decision of the Committee to make such a request was formally announced together with such other documents as the Court requires."

Article XII

[under discussion]

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COMMITTEE ON APPLICATIONS FOR
REVIEW OF ADMINISTRATIVE
TRIBUNAL JUDGEMENTS
Thirty-sixth session

Report of the Rapporteur and Acting Chairman on the work of the Committee at the second part of the extended thirty-sixth session

INTRODUCTION

1. The second part of the extended thirty-sixth session was held on 16, 18, 19 and 30 July 1991. Due to some urgent matters that kept him in Prague, the Chairman of the Committee, Mr. Václav Mikulka, could not attend this part of the session. Therefore, in accordance with paragraph 2 of article XII of the rules of procedure of the Committee, the meetings of the second part of the extended thirty-sixth session were chaired by the Rapporteur of the Committee, Mr. Anthony Aust.

2. At the second part of the extended thirty-sixth session the Committee continued consideration of improvements which could be made in the current procedures of the Committee. In view of this particular purpose, as decided at the first meeting of the extended thirty-sixth session, on 20 May 1991, the meetings of the session continued to be open to the delegates of interested Member States, who were not members of the Committee but who were interested in participating as observers.

3. On 20 May 1991, the members of the Committee identified several areas where the current procedures of the Committee might need improvement. These were the following: time-limit for submission of applications to the Committee; procedures to be applied for taking a decision on the non-receivability of applications; observations of the Applicant on the comments of the Respondent; verbatim records of the public meetings; and the officers of the Committee. After the first meeting, at the request of the Committee, the Chairman of the Committee prepared a report (A/AC.86/44) containing concrete draft proposals for the revision of the rules of procedure of the Committee.

I. DELIBERATIONS OF THE COMMITTEE AT THE SECOND PART OF THE EXTENDED THIRTY-SIXTH SESSION

4. During this part of the session, the members of the Committee examined the proposals in the above report. At the beginning of the work of the Committee, the Acting Chairman gave a summary of the proposals. The Committee then proceeded to examine them.

5. At the end of the second part of the session, in addition to the Chairman's report (A/AC.86/44) the Committee had before it an interim paper (A/AC.86/45) containing the text of the rules which had been provisionally revised during the first meetings of the second part of the session.

6. On the issue of the time-limit for submission of applications to the Committee, the Chairman's report contained in paragraph 15 two alternative proposals. Having discussed them, the members of the Committee preferred alternative B, which extends by an additional two weeks the time during which the judgement is presumed to be in the mail from the Executive Secretary of the Tribunal to the parties before the Tribunal. In other words, a revised text of the rules of procedure of the Committee provided that the date of the judgement shall be presumed to be 30 (instead of 14) days after the dispatch of the copies of the judgement by the Executive Secretary.

7. With regard to the procedures for taking a decision on the non-receivability of the application, the Committee addressed the situations where the application does not appear to be timely, as well as the cases where it manifestly does not comply with the requirements set forth for the submission of applications to the Committee.

8. Having examined various proposals made during its discussions, the Committee concluded that in the first instance it should be for the Chairman to determine, after consulting all the members of the Committee, that the application had not been submitted within the time-limit set forth in paragraph 1 of article 11 of the statute of the United Nations Administrative Tribunal. It was envisaged that the Chairman might consult using a written "no objection" procedure.

9. In the second instance the Committee agreed that the Chairman of the Committee would have the power to take the following decisions. First, he can decide that an application manifestly does not comply with the requirements of article II, paragraph 2, of the rules of procedure of the Committee and therefore should be returned to be corrected and resubmitted within three weeks. Secondly, he can decide that the application has not been resubmitted within these three weeks in a form which meets the requirements as set forth in the above-mentioned article and therefore shall be considered irreceivable.

10. Since the Chairman would be entrusted with important powers to determine cases where an application could be considered irreceivable, the Committee found it necessary to supplement the rules of procedure by an additional article stating that at the beginning of each session the Chairman shall

inform the Committee of any application submitted since its last session that he had decided was irreceivable and of the reasons for his decision.

11. On the question of observations of the Applicant on the comments of the Respondent, the Committee took the view that for the purposes of the examination of an application, the only documents that the Committee should have in front of it should be the application itself, the judgement of the Administrative Tribunal and the comments of the other party to the proceedings before the Administrative Tribunal.

12. When considering paragraph 2 of Article VII of the rules relating to the documentation before the Committee, the members of the Committee took the view that reference to the possibility of oral hearings by the Committee, contained in that paragraph, should be deleted since such provision could only give the impression that the Committee was a type of an appeal body.

13. With regard to the issue of a verbatim record, the Committee decided to retain the text of paragraph 2 of article XI without any changes. The paragraph provides that a verbatim record of the public proceedings of the Committee shall be prepared only when the Committee requests an advisory opinion of the International Court of Justice. At the same time, it was understood that, even if the Committee did not request an advisory opinion of the Court at the next session of the Committee to be held in September 1991, the Chairman of the Committee would consult its members on the need to have a verbatim record of the public meeting or meetings of the Committee held at that session.

14. During the extended session, the members of the Committee debated at length a proposal to create an office of Vice-Chairman as well as various suggestions regarding the procedures that could be adopted for the election of such an officer. The Committee eventually came to the conclusion that the proposal did not have enough support and therefore article XII of the rules of procedure of the Committee, which envisages election of only a Chairman and a Rapporteur as the officers of the Committee, should be left unchanged.

II. DECISIONS

15. As a result of its deliberations, at the last meeting of the extended session, held on 30 July 1991, the Committee adopted the following revised texts of paragraph 1 of article II, paragraph 2 of article III, paragraph 2 of article VII and the text of a new article III bis of the Rules of procedure of the Committee:

Article II, paragraph 1

"1. (a) Applications asking the Committee in accordance with article 11 of the statute of the United Nations Administrative Tribunal to request an advisory opinion of the International Court of Justice shall be

submitted in writing to the official designated by the Secretary-General to serve as Secretary of the Committee.

"(b) For the purposes of article 11, paragraph 1, of the statute of the Administrative Tribunal, the date of the judgement shall be considered to be date by which it was received by both the parties to the proceedings before the Tribunal. That date shall be presumed to be 30 days after the dispatch of copies of the judgement by the Executive Secretary of the Tribunal, unless either party can show to the satisfaction of the Chairman of the Committee that the actual date of receipt was later.

"(c) For the purposes of paragraph 2 of article 11 of the statute, the date of receipt by the Committee of an application shall be the date two weeks after the copies of the application are dispatched to the members of the Committee by the Secretary of the Committee.

"(d) If the Chairman, after consulting all the members of the Committee, determines that the application has not been submitted within the time-limit set forth in paragraph 1 of article 11 of the statute of the United Nations Administrative Tribunal, the Secretary of the Committee shall so inform the Applicant."

Article III, paragraph 2

"2. If the Chairman of the Committee decides that an application manifestly does not comply with the requirements of article II, paragraph 2, of these rules, the application shall be returned by the Secretary of the Committee with a request that it be corrected and re-submitted within three weeks of the date on which the Secretary dispatched the application. If the Chairman of the Committee decides that the application has not been resubmitted within the indicated time-limit in a form which meets the requirements of article II, paragraph 2, of these rules, it shall be considered to be irreceivable, and the Secretary shall so inform the Applicant."

Article VII, paragraph 2

"2. For the purposes of the examination of an application, the Committee shall have before it in document form only the application, the judgement of the Administrative Tribunal to which it relates and the comments of the other party to the proceedings before the Administrative Tribunal, if the latter wishes to submit such comments in accordance wth paragraph 1 of article IV of the present rules. The application and the comments shall be submitted in writing only."

New article III bis

"At the beginning of each session the Chairman of the Committee shall inform the Committee of any application submitted since its last session that he decided, pursuant to paragraph 1 (d) of article II or paragraph 2 of article III of these rules, was irreceivable and of the reasons for his decision."

16. The Committee also decided at the meeting held on 30 July 1991 that the rules of procedure of the Committee, as revised at the extended thirty-sixth session, shall govern the proceedings of the Committee in relation to the applications submitted with regard to the Administrative Tribunal judgements communicated by the Executive Secretary of the Tribunal on or after 31 July 1991, to the parties before the Administrative Tribunal.

17. The revised rules of procedure of the Committee were circulated on 31 July 1991 in document A/AC.86/2/Rev.4.